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NO. 26819

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
MELVIN DICKENS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
(CR. NO. KOC03-231)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Foley and Fujise, JJ.)

Defendant-Appellant Melvin Dickens (Dickens) appeals from the district court's¹ August 12, 2004 judgment convicting him of the offense of Cruelty to Animals, Hawaii Revised Statutes (HRS) § 711-1109 (Supp. 2004)², and sentencing him to imprisonment for 243 days and a fine of \$50.

The Complaint filed on December 2, 2003 was based on an incident that occurred in Kōloa, County of Kaua'i, on November 2, 2003. On December 18, 2003, Dickens waived his right to a jury trial. A bench trial was held on January 15, 2004.

¹ The Honorable Trudy Senda presided.

² Hawaii Revised Statutes (HRS) § 711-1109 (2004) states, in relevant part, as follows:

Cruelty to animals. (1) A person commits the offense of cruelty to animals if the person intentionally, knowingly, or recklessly:

- (a) Overdrives, overloads, tortures, torments, cruelly beats or starves any animal, or causes or procures the overdriving, overloading, torture, torment, cruel beating or starving of any animal, or deprives a pet animal of necessary sustenance or causes such deprivation[.]

HRS § 711-1100 (1993) defines "cruelty" as including "every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted."

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On September 10, 2004, Dickens filed a notice of appeal.³ This appeal was assigned to this court on June 23, 2005.

Dickens contends that the district court reversibly erred because (1) there was insufficient evidence to support a conviction for the offense of Cruelty to Animals; (2) Dickens proved one or both of the following defenses: self-defense and defense of property; and (3) Dickens proved a choice of evils defense.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments advanced and issues raised, we resolve Dickens' points of error as follows:

(1) In light of the applicable standard of review⁴, we

³ The notice of appeal was originally filed in the Circuit Court of the First Circuit. It was later re-filed in the District Court of the Fifth Circuit on September 15, 2004.

⁴ The standard of review on appeal for sufficiency of the evidence is the substantial evidence standard.

We have long held that evidence adduced in the trial court must be considered in the strongest light for the prosecution when the appellate court passes on the legal sufficiency of such evidence to support a conviction; the same standard applies whether the case was before a judge or a jury. The test on appeal is not whether guilt is established beyond a reasonable doubt, but whether there was substantial evidence to support the conclusion of the trier of fact. Indeed, even if it could be said in a bench trial that the conviction is against the weight of the evidence, as long as there is substantial evidence to support the requisite findings for conviction, the trial court will be affirmed.

"Substantial evidence" as to every material element of the offense charged is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion. And as trier of

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conclude that the following evidence was sufficient to support a conviction for the offense of Cruelty to Animals:

Two "big" dogs (First Dog and Second Dog) ran away from two "little" girls who were walking them. The dogs ran through an open gate into a fenced property where Dickens' sister had her house and "chicken farm". While Dickens was working in the garage at his house nearby, Dickens heard the sound of "dogs barking and chickens screaming" coming from his sister's yard and ran over to see what was happening. Dickens brought a wooden stick with him. The stick was approximately two feet long and about one inch thick.

Dickens saw the dogs attacking the chickens, jumped over the four to five feet fence, and began chasing the dogs. First Dog exited the fenced area. While Dickens continued to chase Second Dog, Second Dog attempted to get out of the yard by digging her way under the fence. Dickens cornered Second Dog and began to hit her with the stick. First, he hit Second Dog on her back, after which she rolled over on her side. Dickens then began to hit her head. She uttered a "yelp" when Dickens first struck her, but made no further sounds thereafter. She was lying on the ground, not moving. Dickens continued to hit Second Dog

fact, the trial judge is free to make all reasonable and rational inferences under the facts in evidence, including circumstantial evidence.

State v. Pone, 78 Hawai'i 262, 265, 892 P.2d 455, 458 (1995) [.]

State v. Eastman, 81 Hawai'i 131, 135, 913 P.2d 57, 61 (1996) (internal quotation marks and brackets omitted).

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at least three to six times in the head and mouth area. Dickens said that "he was going to kill the dog for coming on his property." He "stopped because the dog went fall down and knock out." He then picked her up, threw her over the fence, and said, "You want your dog, keep it out of my -- out of my -- my sister's property." Although Second Dog's "eyes were full of blood" and "blood was coming out of the mouth," she survived.

(2) HRS §§ 703-304 (1993)⁵ and 703-306 (1993)⁶ are not applicable.

Dickens failed his burden of proving that HRS § 142-74(a) (2004)⁷ authorized him to do what he did. Dickens

⁵ HRS § 703-304 (1993) states, in relevant part, as follows:

Use of force in self-protection. (1) Subject to the provisions of this section and of section 703-308 [Use of force to prevent suicide or the commission of a crime], the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.

⁶ HRS § 703-306 (1993) provides, in relevant part, as follows:

Use of force for the protection of property. (1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

- (a) To prevent the commission of criminal trespass or burglary in the building or upon real property in the actor's possession or in the possession of another person for whose protection the actor acts; or
- (b) To prevent unlawful entry upon real property in the actor's possession or in the possession of another person for whose protection the actor acts; or
- (c) To prevent theft, criminal mischief, or any trespassory taking of tangible, movable property in the actor's possession or in the possession of another person for whose protection the actor acts.

⁷ HRS § 142-74 (2004) states as follows:

Liability of dog owner; penalty. (a) If any dog, while on private property without the consent of the owner of that

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testified that he was angry because other animals had previously come onto the property. However, he did not know if either of the two dogs in this case had ever done so. He also testified that, although he had been bitten by other dogs before, he had not been bitten by either of the two dogs in this case.

The common law right to defend property and self against marauding dogs alleged by Dickens is no more than the flip side of the definition of "cruelty" in HRS § 711-1100 (1993) which requires the prosecution to prove that "unjustifiable physical pain, suffering, or death [was] caused or permitted." Dickens testified, in relevant part, as follows: "I jumped over the fence and ran over to chase [First Dog and Second Dog] out. [First Dog] ran out, and [Second Dog] gnarled at me and showed me its teeth. And it came towards me, so I hit him [sic]." The court either did not believe Dickens' testimony that Second Dog was a threat to him, or it determined that Dickens unjustifiably continued his attack on Second Dog long after she ceased to be a threat to him.

(3) Similarly, the "choice of evils" defense asserted by Dickens also is no more than the flip side of the definition of "cruelty" in HRS § 711-1100 which requires the prosecution to

property, injures or destroys any sheep, cattle, goat, hog, fowl, or other property belonging to any person other than the owner of the dog, the owner of the dog shall be liable in damages to the person injured for the value of the property so injured or destroyed. The owner of the dog shall confine or destroy the dog, and if the owner of the dog neglects or refuses to do so, the owner of the dog, in the event of any further damage being done to the person or property of any person by the dog, in addition to paying the person injured for the damage, shall pay the costs of the trial together with the penalty imposed under section 142-12, and it shall be lawful for any other person to destroy the dog.

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prove that "unjustifiable physical pain, suffering, or death [was] caused or permitted."

Therefore, IT IS HEREBY ORDERED that the district court's August 12, 2004 judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, October 10, 2005.

On the briefs:

David R. Lusk,
Deputy Public Defender,
for Defendant-Appellant.


Chief Judge

Tracy Murakami,
Deputy Prosecuting Attorney,
County of Kauai
for Plaintiff-Appellee.


Associate Judge


Associate Judge